

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

JOSÉ GARCIA,

Plaintiff

NO. 5:08-CV-309 (CAR)

VS.

RALPH BATTLE, WARDEN,

Defendants

**PROCEEDINGS UNDER 42 U.S.C. §1983
BEFORE THE U. S. MAGISTRATE JUDGE**

ORDER AND RECOMMENDATION

Before the court are plaintiff José Garcia's motions seeking dismissal (Tab #24) and court-appointed counsel (Tab #28). In view of, and for the reasons stated in, the undersigned's recommendation this day entered to grant defendant Battle's motion seeking dismissal, the undersigned hereby DENIES the plaintiff's motion seeking counsel and RECOMMENDS that the plaintiff's motion seeking dismissal be DENIED as Moot.¹

Pursuant to 28 U.S.C. §636(b)(1), the parties may serve and file written objections to this RECOMMENDATION with the district judge to whom this case is assigned **WITHIN FOURTEEN (14) DAYS** after being served with a copy thereof.

SO ORDERED and RECOMMENDED this 16th day of DECEMBER, 2009.



CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE

¹Rule 41(a) of the Federal Rules of Civil Procedure permits a plaintiff to voluntarily dismiss his lawsuit without order of court provided he does so either prior to the filing of defensive pleadings by the adverse party or after obtaining a stipulation of dismissal signed by all parties who have appeared in the action. Absent complying with these two requirements, "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." Neither requirement has been met herein.